

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

G.L., by and through his
guardian ad litem Stephen J.
Greene,

Plaintiff,

v.

MELANIE CATANIO, an individual,
and CITY OF FOLSOM, a public
entity,

Defendants.

No. 2:22-cv-01686-JAM-JDP

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

Minor G.L. ("Plaintiff"), by and through his guardian ad litem, Stephen J. Greene, sues Police Officer Melanie Catanio and the City of Folsom (collectively "Defendants") for various constitutional violations under 42 U.S.C. § 1983. Defendants move to dismiss Plaintiff's Second Amended Complaint ("SAC"). See Mot. to Dismiss ("Mot."), ECF No. 41; SAC, ECF No. 39. Plaintiff opposes the motion. See Opp'n, ECF No. 43. Defendants replied. See Reply, ECF No. 44. For the reasons set forth

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below, the Court GRANTS Defendants' motion to dismiss.¹

I. BACKGROUND

Plaintiff G.L. brings this suit against Defendants for alleged wrongful acts taken in the course of investigating Plaintiff's mother for sexual child abuse. SAC ¶ 1. Plaintiff is the fourth of five children, with three older brothers and one younger sister. Id. ¶ 6. Plaintiff's mother, Patricia Lane, was convicted of four counts of Penal Code § 288(a) for sexually abusing her three older sons, Plaintiff's brothers, and her brother, Plaintiff's uncle. Id. ¶ 3; Mot. at 1. Plaintiff's mother was also charged with sexually abusing Plaintiff, but she was ultimately acquitted of those charges. Mot. at 1.

Plaintiff alleges that Defendant Officer Catanio unlawfully seized him when she interviewed him without the knowledge or consent of his parents at his school on December 4, 2018. SAC ¶ 12. Plaintiff alleges Defendant Officer Catanio unlawfully seized him again when she interviewed him at the Child Protective Services ("CPS") SAFE Center on June 28, 2019. Id. ¶ 17.

Plaintiff further alleges that Defendant Officer Catanio intentionally suppressed exonerating evidence from the first interview and misrepresented its contents to the Sacramento Superior Court in order to obtain a No-Contact Order from the court, separating Plaintiff from his mother for a period of two years. Id. ¶¶ 41-42. Defendant Officer Catanio allegedly "intentionally destroyed" the recording of Plaintiff's first

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for February 14, 2023.

1 interview. Id. ¶¶ 12-14. Defendant Officer Catanio also
2 allegedly fabricated a story about G.L.'s older brother
3 "reported[ly] seeing their mother digitally penetrate G.L.'s
4 rectum." Id. ¶ 43. Plaintiff further alleges Defendant City of
5 Folsom knew or had reason to know of Officer Catanio's wrongful
6 behavior and failed to correct it. Id. ¶¶ 100-103. Based upon
7 these allegations, Plaintiff asserts Defendants violated his
8 constitutional rights under the Fourth and Fourteenth Amendments
9 and so pray for damages and injunctive relief against them. See
10 SAC.

11 II. OPINION

12 A. Legal Standard

13 Federal Rule of Civil Procedure 8(a)(2) requires "a short
14 and plain statement of the claim showing that the pleader is
15 entitled to relief." When a plaintiff fails to "state a claim
16 upon which relief can be granted," the Court must dismiss the
17 suit. Fed. R. Civ. P. 12(b)(6). To defeat a motion to dismiss,
18 a plaintiff must "plead enough facts to state a claim to relief
19 that is plausible on its face." Bell Atlantic Corp. v. Twombly,
20 550 U.S. 544, 570 (2007). Plausibility under Twombly requires
21 "factual content that allows the Court to draw a reasonable
22 inference that the defendant is liable for the misconduct
23 alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "At
24 this stage, the Court 'must accept as true all of the
25 allegations contained in a complaint.'" Id. But it need not
26 "accept as true a legal conclusion couched as a factual
27 allegation." Id.

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1 B. Discussion

2 1. Claim One: Wrongful Seizure under the Fourth
3 Amendment at School

4 Defendant Catanio asserts she is entitled to qualified
5 immunity for the "one hour in-school interview" with Plaintiff,
6 which Plaintiff claims was an unlawful seizure under the Fourth
7 Amendment. Mot. at 7. The Court agrees with Defendant.

8 Qualified immunity protects government officials from
9 liability for money damages unless their conduct violates
10 "clearly established" law that a reasonable public official would
11 have known. Pearson v. Callahan, 555 U.S. 223, 231 (2009). The
12 inquiry for the Court is two-fold. Saucier v. Katz, 533 U.S.
13 194, 200 (2001). First, the Court must determine whether the
14 facts alleged, taken in the light most favorable to the
15 plaintiff, constitute a violation of a constitutional right. Id.
16 Second, the Court must determine whether the constitutional right
17 was clearly established at the time of the alleged violation.
18 Id. Answering either prong in the negative means the government
19 official(s) are entitled qualified immunity. Id. at 201.

20 A court may address the second prong of the qualified
21 immunity test first if it is clearly dispositive and if doing so
22 would resolve the case efficiently. Pearson, 555 U.S. at 242. A
23 right is clearly established when "[t]he contours of the right
24 [are] sufficiently clear that a reasonable official would
25 understand that what he is doing violates that right." Hope v.
26 Pelzer, 536 U.S. 730, 744 (2002). "[W]hether the violative
27 nature of particular conduct is clearly established" is a
28 question be answered "not as a broad general proposition," but

1 with reference to the facts of specific cases. Mullenix v. Luna,
2 577 U.S. 7, 12 (2015). Except in the most obvious of cases, a
3 plaintiff seeking to overcome an assertion of qualified immunity
4 "must identify a case that puts [the defendant] on notice that
5 his specific conduct was unlawful." Rivas-Villegas v.
6 Cortesluna, 142 S. Ct. 4, 8 (2021) (per curiam).

7 Here, Plaintiff only discusses one case as precedent:
8 Camreta v. Greene, 588 F.3d 1011, 1015 (9th Cir. 2009). Despite
9 Plaintiff's contentions, Camreta does not stand for the
10 proposition that Plaintiff's right against being interviewed
11 without consent was clearly established in the Ninth Circuit in
12 2018, because the case was vacated in 2011 by the Supreme Court.
13 Further, the Supreme Court vacatur of the Ninth Circuit holding
14 "strip[ped] the decision below of its binding effect." 563 U.S.
15 692, 713 (2011). On remand, the Ninth Circuit then also vacated
16 the portion of its opinion on the Fourth Amendment issue
17 consistent with the Supreme Court's instructions. 661 F.3d 1201,
18 1201-02 (9th Cir. 2011). Because both vacatures happened before
19 the alleged seizure at school in 2018, Camreta cannot serve as
20 precedent clearly establishing that a warrantless interview
21 violates Plaintiff's right against illegal seizures.

22 Undeterred, Plaintiff argues that "[n]otwithstanding the
23 Supreme Court's vacatur of the Fourth Amendment portion of the
24 Ninth Circuit decision in Greene, Catanio violated G.L.'s clearly
25 established constitutional right to be free from prolonged
26 warrantless interviews in the absence of parental consent,
27 exigent circumstances, or probable cause." Opp'n at 6.
28 Plaintiff, however, fails to support this argument with any

1 binding or persuasive authority. Once Defendant has invoked the
2 protective mantle of qualified immunity, it is Plaintiff's burden
3 to cast it aside by showing the infringed upon constitutional
4 right was clearly established. Rivas-Villegas v. Cortesluna, 142
5 S. Ct. at 8. Plaintiff, relying solely on Camreta, has failed to
6 do so. For this reason, the Court finds Plaintiff has not met
7 the second prong of the qualified immunity analysis and Defendant
8 Catanio is entitled to qualified immunity on Plaintiff's first
9 claim. Further, the Court finds amendment will be futile and
10 dismisses Plaintiff's first claim with prejudice. Deveraturda v.
11 Globe Aviation Sec. Servs., 454 F.3d 1043, 1049 (9th Cir. 2006).

12 2. Claim Two: Wrongful Seizure under the Fourth
13 Amendment at Child Protective Services

14 Plaintiff's second claim is functionally the same as his
15 first claim, only with reference to a different instance of
16 seizure at the CPS SAFE Center in 2019. Therefore, for the same
17 reasons articulated above, Defendant Catanio is entitled to
18 qualified immunity on Plaintiff's second claim. Accordingly, the
19 Court dismisses Plaintiff's second claim with prejudice.
20 Deveraturda, 454 F.3d at 1049.

21 3. Claim Three: Interference with Familial Association
22 under the Fourteenth Amendment

23 Plaintiff next asserts a claim for interference with
24 familial association on the ground that "Catanio's seizure of
25 G.L. [and] ensuing fabrications about G.L. [resulted in a two
26 year] No-contact Order during his formative years." Opp'n at 6.
27 Plaintiff alleges this No-Contact Order had a "devastating
28 impact" upon Plaintiff's relationship with his mother, which

1 effectively terminated the parent-child relationship. Id. Since
2 the No-Contact Order expired on October 18, 2021, Plaintiff has
3 reestablished contact with his mother, albeit only through
4 "security glass or by telephone/video" due to his mother's
5 incarceration. SAC ¶¶ 42,62.

6 While the Court must take Plaintiff's allegations as true
7 for the purposes of a motion to dismiss, the Court finds little
8 authority to support Plaintiff's contention that an interview at
9 CPS or a No-Contact Order qualifies as governmental interference
10 with Plaintiff's constitutional right to familial association.
11 First, as to the alleged seizure, courts have stated that claims
12 by children who are seized are assessed under the Fourth
13 Amendment right to be free from unreasonable seizures and not the
14 Fourteenth Amendment. Keates v. Koile, 883 F.3d 1228, 1236 (9th
15 Cir. 2018). Plaintiff's alleged seizure at CPS therefore does
16 not support his familial association claim.

17 Second, as to the No-Contact Order, the Ninth Circuit "only
18 consider[s a parent-child relationship] impaired in situations
19 such as the death of a child, the loss of parental rights, or the
20 loss of contact or custody with the child." E.H. v. Brentwood
21 Union Sch. Dist., 2013 WL 5978008, at *2 (N.D. Cal. 2013) (citing
22 Kelson v. City of Springfield, 767 F.2d 651, 654-55 (9th Cir.
23 1985). Such examples demonstrate that the Constitution "do[es]
24 not provide constitutional protections from any state action that
25 has the ultimate effect of disturbing the tranquility of the
26 parent-child relationship." Harry A. v. Duncan, 351 F.Supp.2d
27 1060, 1068 (D. Mont. 2005), affirmed at 234 Fed. Appx. 463 (9th
28 Cir. 2007). Although Plaintiff temporarily lost contact with his

1 mother, there is no authority before the Court to suggest a
2 temporary period of no-contact constitutes governmental
3 interference "so intrusive as to be the equivalent of termination
4 of [the parent-child relationship.]" Harry A., 351 F.Supp.2d at
5 1068. As Defendant points out, "Plaintiff does not [otherwise]
6 allege any loss of parental right or physical custody." Mot. at
7 10. Accordingly, finding insufficient factual allegations to
8 state a familial association claim under the Fourteenth
9 Amendment, the Court dismisses Plaintiff's third claim. As
10 amendment would be futile, the Court dismisses the claim with
11 prejudice. Deveraturda, 454 F.3d at 1049.

12 4. Claim Four: Equal Protection under the Fourteenth
13 Amendment

14 To state a claim for equal protection, a plaintiff must
15 allege either that a defendant intentionally discriminated
16 against the plaintiff based on his membership in a protected
17 class or that similarly situated individuals were intentionally
18 treated differently without a rational relationship to a
19 legitimate state purpose. Lee v. City of Los Angeles, 250 F.3d
20 668, 686-87 (9th Cir. 2001).

21 Plaintiff asserts he suffered discrimination on the basis of
22 his gender, because he was treated differently from his sister, a
23 similarly situated individual, without any rational basis. SAC
24 ¶ 83. As Defendant Catanio argues, "Plaintiff's sister was not
25 'similarly situated' . . . [Given that] Plaintiff's mother was
26 suspected of molesting several male siblings/family members, it
27 is of no import [that] a female child was not given the same
28 treatment absent any allegations his sister was a victim of

1 sexual abuse as well.” Mot. at 11 (emphasis added). Plaintiff
2 has not alleged that his sister was molested or that she should
3 have been a more integral part of the investigation against his
4 mother. Under the facts alleged, Plaintiff and his sister were
5 not similarly situated.

6 Thus, Plaintiff has failed to state a claim for violation of
7 his rights under the Equal Protection clause. The Court further
8 finds amendment of this claim would be futile. Accordingly, the
9 Court dismisses this claim with prejudice. Deveraturda, 454 F.3d
10 at 1049.

11 5. Claim Five: Judicial Deception

12 Plaintiff has the due process right to be free from
13 deliberately false statements during a court proceeding. To
14 state a claim for judicial deception, Plaintiff must allege that
15 the defendant officer (1) deliberately fabricated evidence and
16 (2) the deliberate fabrication of evidence caused Plaintiff’s
17 deprivation of liberty. Keates, 883 F.3d at 1240. A state
18 officer who “submit[s] an affidavit that contain[s] statements
19 he knew to be false or would have known were false had he not
20 recklessly disregarded the truth . . . cannot be said to have
21 acted in a reasonable manner, and the shield of qualified
22 immunity is lost.” Chism v. Washington, 661 F.3d 380, 393 (9th
23 Cir. 2011) (quoting Branch v. Tunnell, 937 F.2d 1382, 1387 (9th
24 Cir. 1991)).

25 Defendant Catanio argues this claim fails because Plaintiff
26 has failed to identify any constitutional injury to himself as a
27 result of judicial deception. Mot. at 12. The Court agrees.

28 Plaintiff lists a number of alleged harms he suffered as a

1 result of Defendant Catanio's misrepresentations, but only two
2 warrant discussion: First, Plaintiff alleges that but for
3 Defendant Catanio's misrepresentations to the state court,
4 Plaintiff would not have been "illegally seized without a
5 warrant at the School Interview and the CPS SAFE Center
6 Interview." SAC ¶ 93. However, the very fact that Defendant
7 Catanio did not have a warrant proves there is no causation
8 between her misrepresentations and Plaintiff's seizures. A
9 claim for judicial deception requires Plaintiff to show that the
10 deception was the but-for and proximate cause of a judicial
11 action. Spencer v. Peters, 857 F.3d 789, 798 (9th Cir. 2017).
12 If Defendant Catanio seized Plaintiff without a warrant, then
13 Defendant acted without the court and, therefore, there is no
14 judicial action to be challenged. For this reason, Plaintiff's
15 alleged seizures cannot be the basis of his claim for judicial
16 deception.

17 Plaintiff next alleges that but for Defendant Catanio's
18 misrepresentation to the state court, the court would not have
19 issued a No-Contact Order, which Plaintiff contends violated his
20 right to familial association. However, as discussed above,
21 there is no authority to support Plaintiff's theory that a No-
22 Contact Order gives rise to a familial association claim. For
23 that reason, the No-Contact Order also cannot support
24 Plaintiff's claim for judicial deception.

25 The Court declines to address Plaintiff's remaining list of
26 alleged harms except to say they are unsupported by caselaw as
27 cognizable harms for a judicial deception claim. Plaintiff has
28 failed to demonstrate the legal import of the fact that he was

1 raised by his father while his mother was in custody or that he
2 was called to answer questions at trial. SAC ¶ 93.

3 Based on the forgoing, the Court finds that Plaintiff has
4 failed to allege facts sufficient to state a claim for judicial
5 deception. The Court also deems amendment to be futile.
6 Accordingly, the Court dismisses this claim with prejudice.
7 Deveraturda, 454 F.3d at 1049.

8 6. Claim Six: Monell Claim

9 Defendant City of Folsom moves to dismiss Plaintiff's Monell
10 claim for failure to allege sufficient facts to state a claim
11 under Rule 12(b)(6). Under Monell, municipalities can be sued
12 directly under 42 U.S.C. § 1983 for an unconstitutional custom,
13 policy, or practice. Monell v. Dep't of Soc. Servs., 436 U.S.
14 658, 690 (1978). To establish municipal liability, "a plaintiff
15 must show (1) he possessed a constitutional right and was
16 deprived of that right, (2) the municipality had a policy,
17 (3) the policy amounts to deliberate indifference to the
18 plaintiff's constitutional right, and (4) the policy was the
19 moving force behind the constitutional violation." Sweiha v.
20 Cty. of Alameda, No. 19-CV-03098-LB, 2019 WL 48482227 at *3 (N.D.
21 Cal. Oct. 1, 2019) (citing Plumeau v. Sch. Dist. No. 40 Cty. of
22 Yamhill, 130 F.3d 432, 438 (9th Cir. 1997)).

23 As discussed above, Plaintiff has failed to state a claim
24 for any constitutional violation and therefore fails to satisfy
25 the first requirement for a derivative Monell claim. See Yagman
26 v. Garcetti, 852 F.3d 859, 867 (9th Cir. 2017) (dismissing
27 derivative Monell claims "premised on a violation of
28 [Plaintiff's] constitutional rights."). Further, even if

1 Plaintiff were to state a sufficient claim for any constitutional
2 violation, Plaintiff would not prevail on the remaining elements.
3 Plaintiff's allegation that Defendant City has a widespread
4 policy of inaction that amounts to "a well-settled practice of
5 ignoring the Fourth Amendment during abuse/assault
6 investigations" is unsupported by any reference to comparable
7 instances of similar behavior.

8 Plaintiff contends there are other instances demonstrating
9 Defendant City of Folsom's unconstitutional policies, but
10 Plaintiff's examples are unavailing. For instance, Plaintiff
11 seeks to rely on facts from O'Neel et al v. City of Folsom et
12 al., Case No. 2:21-cv-02403-WBS-DB, but the cases are
13 fundamentally different. In O'Neel, a child was physically
14 removed from the custody of his parents—no such removal occurred
15 in this case. Likewise, Plaintiff misplaces his reliance on a
16 Superior Court Order from People v. Gregory Harms, attached as
17 Exhibit 5 to Plaintiff's SAC. The attached Order concerns a
18 motion to suppress evidence found from a cell phone seizure and
19 has no bearing here, where the alleged violative conduct is a
20 warrantless interview with a child.

21 As such, Plaintiff has failed to allege sufficient facts
22 showing there is an unconstitutional custom or practice at the
23 City of Folsom with respect to seizing children. Accordingly,
24 finding amendment to be futile, Plaintiff's Monell claim is
25 dismissed with prejudice. Deveraturda, 454 F.3d at 1049.

26 7. Prayer for Injunctive Relief under § 1983

27 A plaintiff must have standing to pursue injunctive relief
28 under § 1983. See Los Angeles v. Lyons, 461 U.S. 95, 105 (1983).

1 As the party invoking federal jurisdiction, Plaintiff bears the
2 burden of alleging specific facts sufficient to establish
3 standing. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560
4 (1992). Plaintiff "must demonstrate standing separately for each
5 form of relief sought." Friends of the Earth, Inc. v. Laidlaw
6 Env'tl. Servs., Inc., 528 U.S. 167, 185 (2000). To assert
7 standing for injunctive relief, Plaintiff must allege he is
8 likely to suffer future injury from Defendants' alleged
9 misconduct. Los Angeles, 461 U.S. at 105. "Past exposure to
10 illegal conduct does not in itself show a present case or
11 controversy regarding injunctive relief [when] unaccompanied by
12 any continuing, present adverse effects." O'Shea v. Littleton,
13 414 U.S. 488, 495-496 (1974).

14 Defendants argue that "Plaintiff here does not state facts
15 establishing a likelihood of any irreparable injury in the future
16 to justify any form of injunctive relief, nor any likelihood of
17 prospective harms being committed against him." Mot. at 14. The
18 Court agrees. Although Plaintiff alleges "G.L. lives in constant
19 fear of being snatched away from the only parent who is still
20 caring for him," Plaintiff has not shown how his subjective
21 apprehension is grounded in reality. SAC ¶ 67. Stated another
22 way, Plaintiff has not alleged facts demonstrating a reasonable
23 likelihood that the alleged unlawful conduct will recur.

24 Plaintiff alludes to "a plan devised long ago by G.L.'s older
25 brothers to utilize government power—namely the Folsom Police—to
26 forcibly seize G.L. from their parents," but the only allegation
27 supporting the existence of this "plan" is Plaintiff's brother's
28 statement that he has had "government help" in seeking to find a

1 safe environment for his siblings. SAC ¶ 63. This allegation
2 alone does not establish a reasonable likelihood that Plaintiff
3 will be seized gain, especially since Plaintiff's mother's
4 criminal trial and related investigation have ended.

5 While Plaintiff's opposition brief asserts Plaintiff has
6 standing to bring each of his claims, Plaintiff's arguments are
7 unresponsive to Defendants' contention that Plaintiff has failed
8 to show a reasonable likelihood of future harm. In the Court's
9 view, Plaintiff thereby concedes the issue. See Resnick, No. CV
10 16-00593-BRO (PJWx), 2017 WL 1531192, at *22, (C.D. Cal. Apr. 13,
11 2017). Accordingly, the Court finds Plaintiff has failed to
12 establish standing. The Court thus strikes Plaintiff's prayer
13 for injunctive relief without leave to amend. Having dismissed
14 all of Plaintiff's claims, the Court need not and will not
15 address the remaining arguments in the parties' briefs.²

16 III. ORDER

17 For the reasons set forth above, the Court GRANTS
18 Defendants' Motion to Dismiss with prejudice. The Clerk is
19 DIRECTED to close the case.

20 IT IS SO ORDERED.

21 Dated: April 24, 2023

22
23 
24 JOHN A. MENDEZ
25 SENIOR UNITED STATES DISTRICT JUDGE

26 _____
27 ² Defendants' collateral attack arguments were particularly
28 compelling, and the Court agrees it is inappropriate for
Plaintiff to make allegations about misconduct that occurred
during the underlying criminal trial.